

**Rules and Regulations**  
**K.S.A. 12-766**  
**Division of Water Resources**  
**Kansas Department of Agriculture**

**5-44-1. Floodplain management; definitions.**

As used in these regulations, K.S.A. 12-766, and by the division of water resources in administering K.S.A. 12-766, unless the context clearly requires otherwise, the following words and phrases shall have the meaning ascribed to them in this section:

- (a) "Basement" means any area of a building having its floor subgrade (below ground level) on all sides.
- (b) "Chief engineer" means the chief engineer of the division of water resources, Kansas state board of agriculture.
- (c) "Development" means any man-made change to real estate, including, but not limited to:
  - (1) buildings or other structures;
  - (2) mining;
  - (3) dredging;
  - (4) filling;
  - (5) grading;
  - (6) paving;
  - (7) excavation or drilling; or
  - (8) storage of equipment or materials.
- (d) "Flood or flooding" means a general and temporary condition of partial or complete inundation of normally dry land from:
  - (1) the overflow of waters normally confined between the banks of a stream or other watercourse, or
  - (2) the unusual, rapid accumulation or runoff of surface waters from any source.
- (e) "Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
- (f) "Lowest floor" means the lowest enclosed area, including a basement, of a building. An unfinished or flood resistant enclosure usable solely for parking of vehicles, building access or storage in an area other than a basement is not considered a building's lowest floor.
- (g) "Permit" means a signed document from a designated community official authorizing

development in a floodplain, including all necessary supporting documentation such as:

- (1) the site plan;
- (2) an elevation certificate; and
- (3) any other necessary or applicable approvals or authorizations from local, state or federal authorities.

(h) "Structure" means a walled and roofed building, a manufactured house, or above ground gas or liquid storage tank.

(i) "Substantially improved" means any reconstruction, rehabilitation, addition to or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the improvement.

(j) "Variance" means a grant of relief by a community from the terms of a floodplain management zoning regulation.

(k) "Flood hazard map" means the document adopted by the governing body showing the limits of:

- (1) the floodplain;
- (2) the floodway;
- (3) streets;
- (4) stream channel; and
- (5) other geographic features.

(Authorized by and implementing K.S.A. 12-766; effective, T-5-12-30-91, Jan. 1, 1992; effective Feb. 17, 1992.)

#### **5-44-2. Floodplain management; conditions for application for approval.**

Before formal adoption by the governing body of any zoning regulation that establishes a floodplain zone or district, or regulates the development within a floodplain zone or district, the governing body shall apply to the chief engineer for approval of the zoning regulations. The governing body shall also apply to the chief engineer for approval of its zoning regulation when:

- (a) the governing body enters into, or alters its status under, the national flood insurance program;
- (b) the governing body adopts a new or revised flood hazard map, base flood elevations, flood insurance study, or regulatory floodway;
- (c) the governing body annexes areas containing floodplain;
- (d) the governing body assumes administrative jurisdiction over the adjacent floodplain areas outside the governing body's boundaries; or

(e) the governing body changes variance procedures used in granting relief from floodplain regulations. (Authorized by and implementing K.S.A. 12-766; effective, T-5-12-30-91, Jan. 1, 1992; effective Feb. 17, 1992.)

**5-44-3. Floodplain management; application for approval of zoning regulations; time limit.**

(a) The application for approval of zoning regulations shall consist of:

(1) a letter which:

(A) requests approval by the chief engineer under K.S.A. 12-766 on a proposed effective date, which shall not be prior to the approval by the chief engineer;

(B) proposes the date of adoption by the governing body; and

(C) states the reason for application for approval as enumerated in K.A.R. 5-44-2;

(2) a copy of the full text of the zoning regulation including maps, plans, profiles and specifications adopted by the floodplain management zoning regulations which meet the requirements of K.A.R. 5-44-4.

(b) When all the data required by the chief engineer is received, the chief engineer shall notify the governing body in writing as to the beginning and ending dates of the 90 day statutory time period for review. (Authorized by and implementing K.S.A. 12-766; effective, T-5-12-30-91, Jan. 1, 1992; effective Feb. 17, 1992.)

**5-44-4. Floodplain management; zoning regulations; minimum standards and criteria.**

Any zoning regulation which regulates development of floodplains shall include the following minimum standards and criteria:

(a) Flood hazard areas shall be identified as follows:

(1) The flood hazard area subject to floodplain management zoning regulation shall be identified by reference to a specific map used to identify the flood hazard. The identification of the map shall include the preparer of the map and the date it was prepared.

(2) When the flood hazard map is revised and republished with a new effective date, the governing body's floodplain management zoning regulations shall amend the zoning regulations to adopt the new map by reference.

(b) The development standards shall meet or exceed the minimum requirements of the national flood insurance act of 1968, as amended, 42 U.S.C. Section 4001 *et seq.* and the regulations adopted pursuant to that act.

(c) Any development standards adopted by the governing body for which minimal requirements have been set by the chief engineer in K.A.R. 5-45-1 *et seq.* shall meet or exceed the requirements of the chief

engineer.

(d) The governing body shall designate a local floodplain administrator by position or job title. The local floodplain administrator's responsibilities shall include:

- (1) the review and issuance of floodplain development permits;
- (2) the conduct or direction of appropriate inspections;
- (3) the maintenance of any records necessary to document compliance with floodplain development permit conditions; and
- (4) any other matters deemed appropriate by the governing body.

(e) The governing body shall designate by position or job title an enforcement officer who is responsible to enforce the actions of the local floodplain administrator.

(f) The local floodplain administrator and enforcement officer may be combined in a single position or job title.

(g) If any part of a proposed development is located within the floodplain, an application for floodplain development permit shall be made to the local floodplain administrator. The application for a floodplain development permit shall contain:

- (1) Sufficient detail for the local floodplain administrator to determine the nature of proposed development and whether permits or approvals are needed from the governing body, state or federal authorities, especially any permits or approvals that may be required by K.S.A. 24-126 or K.S.A. 82a-301 *et seq.*, and their respective regulations; and
- (2) Written documentation of adequate protection from damages which could be caused by the base flood.

(h) If the proposed residential development will be located in an area designated as zone AO on a flood insurance rate map (FIRM), any new or substantially improved residential structure shall have the lowest floor (including the basement) elevated above the highest adjacent natural grade at least as high as the depth number specified in feet on the FIRM. If no depth number is specified on the FIRM, it shall be elevated at least two feet above the highest adjacent natural grade.

(i) If the proposed non-residential development will be located in an area designated as zone AO on a FIRM, any new or substantially improved non-residential structure shall be dry flood proofed or elevated to at least as high as the depth number specified in feet on the FIRM above the highest adjacent natural grade. If no depth number is specified on the FIRM, it shall be dry flood proofed or elevated at least two feet above the highest adjacent natural grade.

(j) If zone AO is not specified on the FIRM, or the proposed development will be located in the floodplain outside zone AO, then the lowest floor of any new or substantially improved residential structure shall be elevated at least one foot above the base flood elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor.

(k) If zone AO is not specified on the FIRM, or the proposed development will be located in the floodplain outside zone AO, then any new or substantially improved non-residential structure shall be dry flood proofed or elevated to at least one foot above the base flood elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor. If the structure is dry flood proofed, a licensed architect or a licensed professional engineer shall certify that the design and methods of construction of the dry flood proofing meet or exceed the minimum requirements of the national flood insurance act of 1968, as amended, 42 U.S.C. Section 4001 et seq. and the regulations adopted pursuant to that act. (Authorized by and implementing K.S.A. 12-766; effective, T-5-12-30-91, Jan. 1, 1992, effective Feb. 17, 1992.)

#### **5-44-5. Floodplain management; variance procedures.**

Any floodplain management zoning regulations shall include procedures for the approval of a variance to the floodplain management zoning regulations. The procedures shall stipulate the criteria for a variance and specify when a variance may be granted by the local floodplain administrator, the enforcement officer or board of zoning appeals. The procedures shall establish a board of zoning appeals for hearing appeals of decisions of the floodplain administrator or enforcement officer and establish the criteria for the appeals. Variances shall not be granted solely to avoid the requirements of a floodplain development permit. (Authorized by and implementing K.S.A. 12-766; effective, T-5-12-30-91, Jan. 1, 1992; effective Feb. 17, 1992.)

#### **5-44-6. Floodplain management; waiver or stricter requirements.**

(a) The chief engineer may waive any of the regulations adopted under this article if it is shown to the satisfaction of the chief engineer that waiver of the regulation will not pose a hazard to the public safety and that such waiver is not adverse to the public interest.

(b) The chief engineer may invoke any jurisdiction granted by statute to impose stricter requirements than those required by rules and regulations where such jurisdiction or additional requirements are necessary to protect the public interest, protect the public safety or prevent damage to public or private property. (Authorized by and implementing K.S.A. 12-766; effective, T-5-12-30-91, 1-1-92; effective 2-17-92.)

#### **5-44-7. Floodplain management; certification of elevations.**

Any elevation required to be certified to meet the requirements of this article of regulations may be certified by either a licensed land surveyor or a licensed professional engineer. (Authorized by and implementing K.S.A. 2006 Supp. 12-766; effective May 18, 2007.)